

1 Gregory J. Yu (State Bar No. 133955)  
GLOBAL LAW GROUP

2 2015 Pioneer Court, Suite P-1

San Mateo, CA 94403

3 Telephone: (650) 570-4140

Facsimile: (650) 570-4142

4 E-mail: glgroup [at] inreach [dot] com

5 Attorney for Plaintiffs and Proposed Class and Subclasses

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 KINDERSTART.COM LLC, a California  
12 limited liability company, on behalf of itself and  
all others similarly situated,

13 Plaintiffs,

14 v.

15 GOOGLE, INC., a Delaware corporation,

16 Defendant.

Case No. C 06-2057 JF

**PLAINTIFF'S ADMINISTRATIVE  
REQUEST UNDER LOCAL RULE 7-11  
REGARDING SCHEDULING, CASE  
MANAGEMENT, AND PROPOSED  
SECOND AMENDED COMPLAINT**

17  
18 **PROCEDURAL BACKGROUND**

19 On June 30, 2006, this Court heard oral argument on Defendant Google's motion to  
20 dismiss Plaintiff KinderStart.com LLC's First Amended Complaint (the "FAC") filed on April  
21 12, 2006, under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) (the "12(b) Motion").  
22 The Court continued Defendant's Special Motion under California Code of Civil Procedure  
23 (CCP § 425.16). At the hearing, the Court tentatively calendared September 29, 2006 for any  
24 new motions regarding Plaintiffs' proposed second amended complaint (the "Proposed SAC").  
25 The parties were asked to confirm that date with the Court's clerk. In the Court's Order of July  
26 13, 2006 (the "July 13 Order"), the 12(b) Motion was granted, with leave to amend. The order  
27 specifically allowed Plaintiffs the opportunity amend Counts Two through Nine of the FAC, and  
28 did not specify a date by which to file the Proposed SAC. Further, during the June 30, 2006

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TO CONTINUE HEARING DATE

1 hearing, the Court continued the Federal Rule of Civil Procedure 26(f) (“Rule 26(f)”) case  
 2 management conference to September 29, 2006. No scheduling order or deadlines have been set  
 3 in this case thus far.

4 **BACKGROUND FOR THIS REQUEST**

5 A. Amendment of Count One – First Amendment and Free Speech. The July 13  
 6 Order provides, in the opening paragraph, that the Rule 12(b) Motion “will be granted with leave  
 7 to amend.” For Count Two through Count Nine, inclusive, of the FAC, the Order states that  
 8 there is leave to amend, but is silent on this point as to Count One. The Ninth Circuit generally  
 9 allows plaintiffs as a matter of right to amend once, even after a motion to dismiss the complaint  
 10 has been granted. This is, in part, because in such event no responsive pleading has been made  
 11 by defendant under Fed. R. Civ. Proc. 15(a). *Schreiber Distributing v. Serv-Well Furniture Co.*,  
 12 806 F.2d 1393, 1401 (9th Cir. 1986). Plaintiffs should have leave to amend unless the Court  
 13 determines that the complaint is beyond cure with the allegation of other facts. *Cook, Perkiss &*  
 14 *Liehe v. N. Cal. Collection Service*, 911 F.2d 242, 247 (9th Cir. 1990). Here, the July 13 Order  
 15 does not contain such a determination as to Count One. Nonetheless, as Plaintiffs are not to  
 16 presume that leave to amend is indeed granted as to Count One, Plaintiffs seek clarification of  
 17 the order on this point.

18 B. Timing for Proposed Second Amended Complaint. The Rule 12(b) Motion was  
 19 argued, heard and decided based on allegations appearing in the FAC as of April 12, 2006.  
 20 Plaintiffs confirmed during the June 30, 2006 hearing that additional information was available  
 21 and secured by Plaintiffs for inclusion in the Proposed SAC. Even since the hearing date, there  
 22 have been several factual developments that properly require careful evaluation, investigation  
 23 and inclusion within the Proposed SAC. This is explained in further detail in the accompanying  
 24 *Declaration of Gregory J. Yu*, attached hereto as Exhibit 1 (“*Yu Third Dec.*”), ¶ 3.

25 C. Case Management Conference. Pursuant to Local Rule 16(d), Plaintiffs file this  
 26 Administrative Request to seek a continuance of the case management conference tentatively set  
 27 for September 29, 2006. Since the Proposed SAC when filed and served may result in a new  
 28 Rule 12(b) motion from Defendant, the Rule 26(f) conference should be held when the motion

has been briefed, heard and decided. Therefore, it is sensible to set the conference on a date concurrent with a continued motion hearing date.

### **SPECIFIED REQUESTS**

A. Count One of the FAC. In the event that the July 13 Order itself does not allow Plaintiffs leave to amend Count One, Plaintiffs request that they be allowed 60 days to complete their investigation described in part in the *Yu Third Dec.* ¶ 3(c), with respect to information regarding the nature, terms, and conditions of relationships between Defendant and various Federal, state and local governments and their respective agencies. Following such detailed investigation and if leave to amend Count One of the FAC is indeed required by motion before the Court, Plaintiffs are prepared to notice such a motion for a hearing date of September 29, 2006 (or such later date as amenable to the parties and approved by the Court).

B. Second Amended Complaint. Recent factual developments are enabling Plaintiffs to further bolster various allegations under the Proposed SAC. *Yu Third Dec.* ¶ 3. Accordingly, Plaintiffs estimate that another 60 days is needed for sufficient and proper evaluation and diligence. Plaintiffs request that the deadline for the Proposed SAC be set for October 6, 2006, with the date for hearing any motions thereon be scheduled for December 1, 2006 (or such later date as amenable to the parties and approved by the Court).

C. Case Management Conference. Plaintiffs propose that the Case Management Conference remain concurrent with the proposed motion hearing date for the Proposed SAC of December 1, 2006 (or such later date as amenable to the parties and approved by the Court).

In sum, Plaintiffs propose this schedule to the Court:

October 6, 2006	Plaintiffs file Second Amended Complaint
October 27, 2006	Defendant files its answer or motion (21 days)
November 10, 2006	Plaintiffs file their opposition to any motion (14 days)
November 17, 2006	Defendant files its reply to any opposition (7 days)
December 1, 2006	Court hearing and Case Management Conference

Defendant flatly declined Plaintiffs' request for a stipulation to this schedule and requested instead that the Proposed SAC be filed by August 11, 2006. *Yu Third Dec.* ¶ 4.

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1 **CONCLUSION**

2 In light of the above, the accompanying declaration of Gregory J. Yu, the documents and  
3 pleadings on file herein, Plaintiff KSC respectfully request the Court to continue the tentative  
4 hearing and case management conference date of September 29, 2006, with further proceedings  
5 according to the foregoing schedule.

6 Dated: August 4, 2006

GLOBAL LAW GROUP

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8 By: /s/ Gregory J. Yu

Gregory J. Yu, Esq.

9 Attorney for Plaintiff KinderStart.com LLC and  
10 for the proposed Class and Subclasses  
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